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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,816	08/25/2000	Michael R. Yeaman	660081.415C1	6324

7590

04/23/2002

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EXAMINER

KAM, CHIH MIN

ART UNIT

PAPER NUMBER

1653

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/648,816

Applicant(s)

YEAMAN ET AL.

Examiner

Chih-Min Kam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-66 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U. S. C. 121:

Claims 1-66, drawn to an antimicrobial peptide composition, classified in class 514, subclass 2, and class 530, subclass 300.

Upon review of the claims, there are thousands of peptides claimed: These peptides comprise core sequences which some positions in each core sequence comprise non-conservative amino acid substituents, and between core sequences there appears to be no overlap. For example, compare claims 1-7 with claims 8-14, claims 1-7 have a core sequence of aa₁-aa₂-aa₃-aa₄-aa₅-aa₆-aa₇ with Ala, Lys or Gly at aa₁, and Leu or Arg at aa₂, while claims 8-14 have a core sequence of aa₁-aa₂-aa₃-aa₄-aa₅-aa₆-aa₇-aa₈-aa₉-aa₁₀-aa₁₁-aa₁₂ with Ser, Leu, Ile, Val, Ala, Lys or Gly at aa₁, and Ser, Ile, Ala, Val, Leu or Arg at aa₂.

Because the claims are written so broadly, a search of the claims would yield nonsensical art that would be applied under 35 U. S. C. 102 (b). For example, in claim 1, any peptide comprising the sequence Phe-Lys would anticipate the claim. Therefore, in order to provide a search of the claimed peptides, Applicants must choose a single peptide having a sequence identifier from claims 1-66 for search. This is not a species election. The elected invention does not include the retromers, truncations, extensions, combinations, fusions and derivatives of the sequence.

Additionally, if there is a specific non-varied core sequence that unifies several sequences, applicants should point out this core sequence and the sequences comprising this core sequences with sequence identifiers. The examiner will then reconsider this restriction

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requirement to include the additional sequences for examination. However, only the core sequence pointed out by applicants will be searched; any art that anticipates the core sequence will be considered to anticipate or as obvious. Each of the sequences requested for search by the Applicants. Upon election, all other sequences will be withdrawn from further consideration by the examiner because these sequences are considered to drawn to non-elected inventions.

Because these inventions are distinct for the reasons given above and have acquired a different searches but are not co-extensive, examination of these distinct inventions would pose a serious burden on the examiner and therefore restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (703) 308-9437. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (703) 308-2923. The fax phone numbers for the

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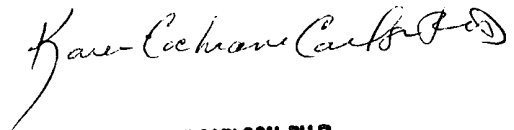
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organization where this application or proceeding is assigned are (703) 308-0294 for regular communications and (703) 308-4227 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Chih-Min Kam, Ph. D. *CMK*
Patent Examiner

April 18, 2002



KAREN COCHRANE CARLSON, PH.D
PRIMARY EXAMINER